1:Vanhove--93A G-5 (ca. 1935) 1941 FO42 Rundi FO42

[opp. p. 107]

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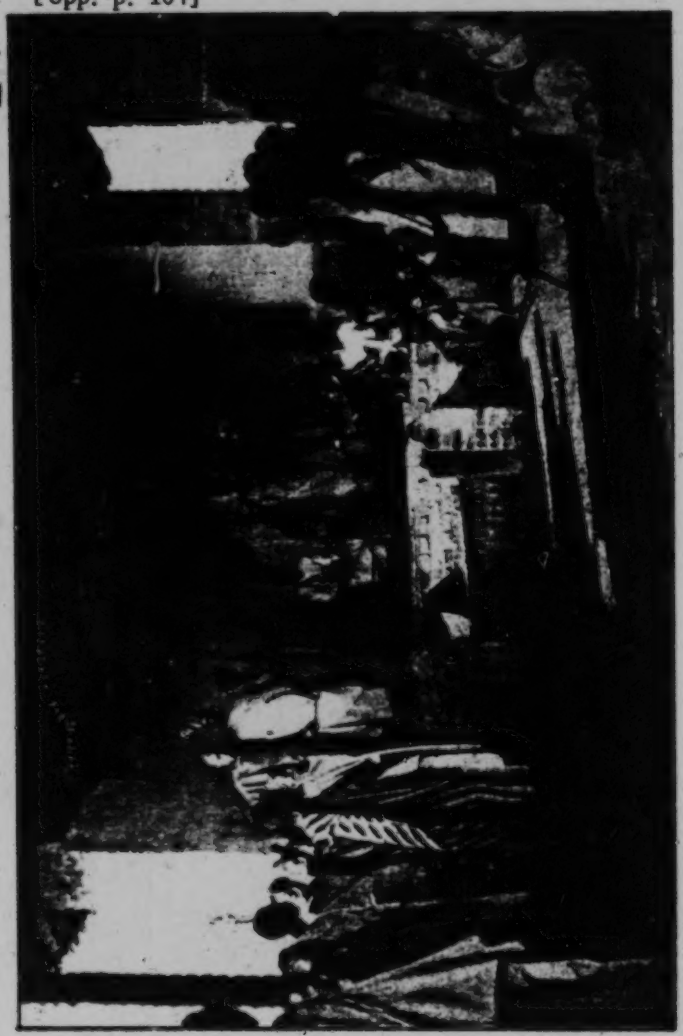

One of the many native tribunals instituted since the Belgian occupation.

(Official photograph, Colonial Office)

692 will go to the king begins between the men (meaning here the arbiters)."

The chief who is judge is always assisted by its abagaragu conversant with the common law of the country, who have the collective name of abachamanza (arbitrating judges). In very delicate matters the case may be postponed to a later date to permit particularly competent abagaragu to handle it. The abachamanza are not necessarily Batutsi; Bahutu may be appointed as assessors and are thus called upon to judge an affair in which a Mututsi is involved.

694 Cases are brought before the tribunal in two ways:

a) When the hill chief (igisonga) or the subchief (umuhingisha) hears that a crime has been committed, [116] he sends a few of his men to arrest the individual who is suspected by public rumor of having committed the offense. The latter, tightly bound, remains shut up in an enclosure open to the winds, located near the chief's house, until the tribunal decides on his fate. During this period of preliminary detention, some of the chief's abagaragu, whether judges or not, question the presumed guilty person and attempt to make him confess his crime (kwindja, lit., to tempt, to solicit).

b) In civil matters the plaintif (umulezi) goes to the chief before whom he squats down, his stick and his spear against his shoulder, claps his hands, and says to the chief: Nimugahorane Imâna! (May God help you!) (implying, to judge my palaver). The defendant (ulegwa) is asked to appear. If after three successive summonses he persists in not appearing, the chief has him called once more. If he still defaults, his adversary has won his case.

695 The tribunal sits on the threshold of the chief's dwelling, where the ibitabo (1) are, or else under the porch in front of the

1. Small, very low festoon-shaped mud walls.

insika (2).

2. A kind of wickerwork screens decorating the base of the pillars supporting the hut's roof.

● 695 The plaintif's relatives and a crowd of curious onlookers attend the debates.

The defendant, then the plaintif, speak in turn, each of them twice. They can have recourse to an unpaid lawyer, generally a son, a faithful servant, or their shebuja.

The assessors who have questions to ask interrogate the parties. The chief himself is silent. Then, at his command or that of the wisest of the assessors, one of them rises and takes up the palaver again in detail (gusor'imanza, to give the content of the palaver, or better, gusubira mu rubanza, to repeat [in place of] the palaver). At the end of this statement [117] during which there has been complete silence, he pronounces the following words: Kubganjye nyanaka aratsinze! (According to me so and so has won), then he sits down again. Although the tribunal's silence indicates their agreement, the chief asks the assessors to confirm their assent and then pronounces the sentence.

If the members of the tribunal are not unanimous, the chief asks one of the opposing assessors to give again a statement of the case, indicating the reasons for his attitude. The first speaker then answers, supported by those of his colleagues who agree with him. The assessors with a different opinion then answer back, and there follows a lively and often stormy debate in open court. The exchange of talk sometimes becomes such that the chief has to interrupt to call the meeting back to dignified order. At a given moment, having heard all the facts, the chief, who is judge, demands silence, takes over in his turn the affair ab ovo, and after having justified his point of view, says: Koko nyanaka aratsinze! (Truly that one wins!).

The most usual methods of proof are testimony and oath. Only the plaintif is authorized to demand testimony. The witness (1)

1. A woman or child can never act as a witness.

(umugabo), always a single one, can be called in civil and penal affairs. He is questioned after the two parties have spoken. The intervention of a witness is only relatively useful, he is always more or less closely related to the plaintif and the defendant generally objects to him.

695 The oath is administered by the chief to both litigants and the witness before they speak. After planting their spears in the ground, they swear, saying: Nkabeshya iti chumu ndakaritega Mutara!' (2) (If I lie, may this spear pierce Mutara!)

2. Instead of pronouncing the name of the reigning king, one often simply says, Ndakariteg'Umwami!

[118] In the past, in the case of a serious theft, assaults and wounds, or suspect illness or death, the accused who persisted in his denial was often tortured or subjected to an ordeal.

A person presumed guilty of a big robbery was tightly bound, then cow's urine was poured into the cuts made by the cords; or else he was deprived of food and beaten till he was crippled, all this without prejudicing the punishment.

695 787 A man who had been the victim of a big robbery, or whose relative had been attacked by, or died of, a suspicious disease, would go to complain to the chief, accompanied by a Muhutu sorcerer (umushuzi), who would then perform the gushora (divination). The sorcerer would take a pruning knife (ikibabo) and ask the accused to spit on the blade (gukamira, lit., to milk) and to pronounce the following words: "If I am guilty, you will become black. If I am not guilty, you will become white like an inyange (ibis)." The umushuzi would then plunge the pruning knife into the fire. When the iron turned red-hot he scattered magic powder (umubi) on the blade and awaited the result of the experiment.

Another test currently used in the same cases was that of the chick called umuchuri (from guchurikam, to upset) for the occasion. The accused drank a little water, rinsed out his mouth, and spat out the water into the beak of the chick. The sorcerer (mututsi) then spoke to the bird, saying: "If you find that this one is guilty, you will make the traveler walk and the sedentary one stop. If he is not guilty, you will make the traveler rest and the sedentary one walk (1)."

1. These sibylline words can be explained as follows: In the entrails of the chick (ibilanga) there are some intestines which in contracting or expanding give the impression of retreating or advancing.

695 opened up its body, and after examining its entrails would give the
787 suitable interpretation.

696 [119] There is no special procedure in the execution of sentences. If the judgment concerns stolen cows, the plaintif or the abagaragu go and take them from the thief. In other cases the condemned one does it himself, and if, as unlikely, he refuses to do so, the chief would compel him by force.

692 In principle, justice is gratuitous and legal expenses do not exist, but the judges are not indifferent to douceur, which gives an advantage to the powerful and wealthy ones. On the other hand, as a rule, an umugaragu with a palaver brings beer or tobacco to his shebuja so that he will bring his case before the tribunal.

Appeals are dealt with by the provincial chief whose tribunal is organized on the same basis as that of the hill chief. This appeal is called gusuzugura (lit., to despise the chief's justice) or gusubira urubanza (to begin the palaver over again).

In the past a Muhutu did not appeal to the provincial chief but to the umugabe w'ingabo (1).

1. Cf. Government and Administration, Right of War, p. 92.

On the other hand, the provincial chief's tribunal has first cognizance of cases concerning cattle and territorial litigation between hill chiefs. It is also obliged to act in cases of expulsion or dispossession of a Mututsi or a Muhutu by a hill chief.

The Mwami's tribunal is the supreme jurisdiction. The king presides, surrounded by his confidential men who are versed in the customs (abahanga) or by persons of high rank who have the responsibility of being judges.

Normally, the Mwami alone is competent to deal in the first instance, and with no appeal, with criminal affairs, [120] but he may delegate his power to an umutware. If, for example, a provincial chief has denounced a sorcerer to the king, the latter may command the chief to kill the umulozi.

Crimes of high treason and violation of state secrets are also exclusively of his competence.

695 In the past, in criminal cases judged by the Mwami, recourse was had to the gihango test in order to force the accused to

695 confess (1). Sentences were carried out by the Batwa executioners.

1. Cf. Government and Administration, Death of the King, p. 82, note 3.

692 695 Any Munyarwanda, even the most humble, may appeal directly to the Mwami if he has been despoiled by a chief. But this resort to royal justice is illusory for the poorer claimants, who are often obliged to remain for an indefinite time at Nyanza before their case is called. In addition, while the judges of the Mwami's tribunal are required to refuse presents offered by the litigants and to judge equitably regardless of their caste, they sometimes are willing to accept an "honorarium" from one or the other of the parties.

692 Finally, the Mwami's tribunal intervenes, with no appeal possible, in litigations arising between individuals belonging to different jurisdictions.

2. Litigation between Natives of Different Jurisdictions

When litigation arises between natives belonging to different hills, the defendant's igisonga deals with the case. The plaintif appears assisted by his shebuja or one of the latter's umugaragu, who acts as a kind of lawyer and is called umuhagarikira. If the plaintif's claim is rejected, he appeals to his chief. The two chiefs then get together in a neutral place with their abagaragu and the [121] litigants. If an amicable arrangement is impossible, the parties have recourse to the jurisdiction of the provincial chief.

If the litigants belong to different provinces, the plaintiff whose claim has been rejected by his adversary's hill chief goes accompanied by his shebuja or a umuhagarikira to the provincial chief who tries to come to an agreement with his colleague. If he does not succeed in doing this, the parties and their patrons go to the Mwami. The king appoints some persons of high rank from among the provincial chiefs on official visits, his courtiers, and his abagaragu to examine the case. This time it is the hill chiefs who plead for their own people. If the decision rendered does not please

628 672 681 in most cases. However, if the ransom is not paid, the members of the injured group, with the consent of the mutwale, proceed to execute the victim. They take the captive to a remote place and first cut off his hands, then his feet, and eventually also the ears, nose, and tongue. Then the unfortunate victim is nailed to the ground by piercing four poles through his arms and thighs; there he finally receives the death blow through his chest (No. 19, p. 472). Another method of execution is to drive a sharp pole through his anus into his body up to his throat. The body is then exhibited in a public place. The vendetta takes similar forms among the other Bahima, down to the far south in Ufipa (No. 47, pp. 108-111). Stealing cattle and witchcraft are punished in the same cruel manner in Urundi.

762 [98] Persons intending to commit suicide, who are not by any means rare either in Urundi or Ruanda, usually kill themselves by hanging or drowning.

695 It appears that the oath (indahiro), the invocation of the deity, the manes, or the king for the purpose of affirming a statement, is not permitted as a legal device among the Barundi who, incidentally, "use oaths, curses, sorcery, lies, or trickery" copiously. On the other hand, a judge frequently inflicts the ordeal on the accused, especially if it is a case where he has charged with witchcraft and sorcery (No. 19, p. 405). Most often this takes the form of the spear test. It consists of stabbing the accused person's arm with a hot spear point. If the blood gushes out, he is judged guilty; if not, he is considered innocent. The water test is applied by making the accused place his hand into a pot of boiling water. If his hand is scalded, he is considered guilty, otherwise, not. Also, under certain conditions, the poison test is used, a custom found all over Africa. Of course, there exist all kinds of methods designed to make the ordeal come out correctly, like greasing or powdering one's skin, using counter-poisons, etc.

754 the first to be considered responsible if a person becomes sick
791 or dies, if a storm devastates the fields, if the cattle meet with an accident or are attacked by epidemics, when women remain barren, if infants are aborted, if thefts are committed, etc. The abarosi frequently employ poison, which is popular both in Urundi and in Ruanda (No. 48, p. 319), but in most cases they use their magic powers. The abarosi obtain magic power over people or over their cattle and other possessions by appropriating a little piece of a person's body, some hair, the paring of a fingernail, sputum, semen or urine, or some cattle dung, straw from the hut, or soil from the fields. All of these things give the abarosi power over a part of the person's "soul." This explains the great reluctance with which a Murundi, like all East African Negroes, allows a stranger to take pictures of himself, submits to physical measurement, or gives his own name or that of his family. If the medicines and protective amulets prove to be ineffective against the black magic of the abarosi, the umufumu will close in on the malefactor, the umurosi. By inspiration and by questioning his magic rattles and other apparatus, the umufumu's suspicion is directed to certain persons, who in most cases are old women! They are accused,
[695] arrested by the mutwale, and if there is no other proof, the umufumu subjects them to a kind of ordeal in which fire, poison, or boiling water is used. In most cases the verdict is unfavorable to the accused (No. 19, p. 405). In petty cases the person found
[688] guilty receives physical punishment or has to pay a fine; in serious ones they are simply beaten to death and thrown in the bush (see above, p. 97).

791 The umufumu's power of divination may also be directed
789 to other things if the party concerned so desires and is prepared to pay the price. Through special ceremonies the umufumu brings rain to the fields, or if there is too much rain, he may stop it (No. 19, p. 443). For rain-making, which is so important for agriculture, there are special experts, the abavurati. However, their number is decreasing since every failure is severely punished by the batwale (No. 45, 1913), p. 50).

644 sorcerers and of possessing exceptional talents. This is why the purely
791 mystical functions of their successors were sanctioned by the conquerors.

As a result, they remain on duty both to His Black Majesty and to his faithful subjects at court, at the capital, and throughout the realm. /399/

A. Bewitchers, spell casters, spells, and sorcery. The sorcerers in this category are subdivided into several groups and operate in various ways.

They are referred to as a group by the generic term umulôzi (abalôzi in the plural), "bewitcher." Kuloga means "to bewitch, to cast a spell," and also "to poison." Ubulôzi (amalôzi in the plural) means "bewitchment," "evil spell," "sorcery," and "poisoning." Those are familiar words in the great lake region.

As we shall see later, many of them ply their trade publicly both at the capital in the service of the king, to deliver him from his enemies, and in the villages where they serve their fellow men.

Others, whose activities are more or less acknowledged, practice only in secret.

Some, as will be made clear, have only a fictional existence and exist only in the imagination of naïve people.

787 1. Abashitsi, or "the catchers," is the name of those who
695 can force a thief to reveal himself through magical practices. The name of their function is borrowed from the verb gushika, "to catch" (the thief), hence the word "urushiko" to designate the procedure. To do this the magician fills a vessel (imbehe) with a liquid which he prepares himself. He blows for a while into a drinking tube, one end of which is immersed in a wooden jar, until the froth (urufuro) overflows, forcing the thief through this mystic and symbolic procedure to reveal his deed in spite of himself. Such, at least, is the popular belief.

791 2. Abaheretsi (from the verb guhereka, "to lay traps through
789 bewitchment") serves to designate a second group of sorcerers who specialize in burying charms and amulets of their own making in banana groves and cultivated fields, /400/ hence the name of uruhereko given to their sorcery.

789 The sorcerer mutilator cuts off a tiny piece (isonga) from the tongue,
751 heart, little finger (umuhera), and skin, and these pieces are dried above the hearth. All of this is then enclosed in a small horn, preferably black, which the assassin wears around his neck as a talisman and which guards him not only against his victim but also against the latter's relatives.

It is also good to procure some of the herb called irago or umurago which has been planted on the slain man's grave. /420/ If this is added to the other gruesome items contained by the horn, the talisman becomes more powerful.

We may add that these people charge very high fees for their services. A bull, at least, is required.

C. Sorcerers who preside over ordeals and who prepare the
695 test poisons. Sorcerers of this type bear the name of Abashozi, hence the verbs gushora, "to put someone through a test," and gushoka (a neutral verb) to designate the test itself.

It does seem that here in Ruanda ordeals are employed only in criminal cases and that their sole object is to prove the innocence or culpability of those who submit to them, as was formerly done in the Middle Ages. Our Blacks have such faith and trust in such judicial methods that they believe in their absolute effectiveness. They have never given a thought to the absurdity of those divinatory tests, in which chance and fraud play such a predominant role.

Such tests are numerous, but the most widespread is that which
695 consists of drinking or smoking the urwizilinga, a kind of shrub that
278 seems to bear at least a superficial resemblance to datura (1). In any
[824]

1. Moavi is used as the test poison practically throughout the rest of Africa. This plant does not seem to exist in Ruanda. The matter, nevertheless, would be worth investigating.

case their effects are similar.

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The maker of test poison usually handles it in the form of a powder which he mixes with water or with pipe tobacco. The accused, male or female, must draw two or three puffs from the pipe. The results are swift. One of the smokers or another, or even several of them at once, is almost immediately seized with a real madness (kussàra) which strips him of his reasoning faculties and which may last sometimes /421/ close to a month, as we were able to verify. The unfortunate victim eats or takes to his lips everything he finds along the way, no matter how unlikely or even repulsive (amabyi!) it may be.

He casts off his clothing, and a mother tosses away her child and goes off, raving or gesticulating like a true lunatic.

Then the intoxicated person sinks into a nightmare-ridden sleep. He talks in his sleep and speaks of ghosts and wild animals which he believes he sees.... In short, he becomes very trying to his family. Could this not be a simple case of autosuggestion, which occurs frequently among Blacks?

If the patient pleads guilty right from the onset of the illness and begs for mercy, the same sorcerer administers to him a counter-poison, another vegetable powder mixed with a little "chloride of liquid sodium" (inkari!), which immediately neutralizes the effects of rwizilinga. The Batutsi also know that in such cases it helps to give fresh milk to those who have taken the poison.

We are acquainted with a case where nearly ten individuals submitted voluntarily to this test. Only two of them were affected. They were deemed guilty then and there. It so happens that the true culprit was discovered some time later. He had not been subjected to the ordeal.

The people nevertheless continue to praise this judicial procedure. Certain things are even related about the subject which are amazing but untrue, and which do naught but strengthen the prestige of the sorcerers (1). /422/

1. "The European cannot help considering, first and foremost, the physiological effects of the

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poison. Accordingly, /in his own mind, / the results of the ordeal will vary in direct proportion with the strength and amount of the drug taken into the organism. If the dose is sufficiently strong, it will invariably do away with the person who swallows it, whether innocent or guilty. If it is insignificant, it will do no harm to the worst criminal. The Whites consider it extraordinary that the native should disregard such simple truisms.

"The point of view of the Blacks, however, is completely different. The idea of what we call "poison" is not clearly defined in their own minds. They know by experience, no doubt, that certain concoctions have the power of killing those who drink them, they are nevertheless unfamiliar with the mechanics of poisoning, and do not attempt to understand it. They do not even suspect its existence. According to them, these concoctions may be deadly only because they serve as vehicles for mystic forces, just like the remedies which they use to cure diseases and whose effectiveness they explain wholly in this way.... The Blacks do not grasp the actual properties of the test poison, but consider only its mystical and immediate power....

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It is a sort of mystic reagent, and as such it is infallible.

"The native is so convinced of this that often he takes no precautions before undergoing the test. He does not make use of his right to watch while the poison is being prepared, he does not scrutinize the dose to see whether it may not be too strong, the liquid too thick, etc.... Why should he, since the beverage does not act physically, so to speak, but spiritually? It does not matter whether a little less or a little more is swallowed. The outcome of the test does not depend on this...

"Such is the faith they have in trial by ordeal that the natives regard the matter of who pounded the poison into powder as an unimportant detail." (Levy-Bruhl, La Mentalité primitive /The Primitive Mentality/, pp. 250 and 251.)

[181] Full of trust, sure of their innocence, and excessively naïve, the natives are completely blind to the frauds of the sorcerers, who call the accused persons in turn into a hut or to an isolated spot. What crimes and injustices have been committed by those doctors in occult sciences!

Other Judicial Tests

695 A. The drum test. One rubs cow dung on the surface of a drum and pours some water onto it, which the accused gathers in his hands and brings to his lips, while the man who presides over the ordeal loudly cries, "May the shades of the deceased and the spirits

695 of the initiates (in the Ryangombe sect) abstain from interfering. As for you, may you be subjected to the sole influence of the test!"

If the accused is guilty, he must "theoretically" suffer and die of excruciating intestinal pains after submitting to the test. /423/

B. The bell test. This test consists of making the accused persons drink water into which a small bell has been plunged for an instant. "May this beverage," says the judge, "cause you to die if you have been justly accused." "Let me die," each of the accused says in turn, "if I have lied!" A disease similar to leprosy will cover the body of the perjurers.

C. The ordeal called "rush-basket ordeal" (urutete). The basket is made of rushes or papyrus stems, with spaces one or two centimeters wide between the coarse meshing. The accused person sits directly on the basket, holding in his hand the sword which is the usual badge of Ryangombe. The bystanders stick their spears into the ground, haft downward, around the man and his improvised seat. A handful of grass of the ishinge kind is brought and laid down by the basket. "If I am guilty," says the man, "may I be the victim of these spears. I call upon you, Ryangombe, king of the initiates! If my innocence is not recognized, I promise to offer you as many cows as there are openings (holes) in this basket and blades of grass in this bunch."

D. The red-hot billhook ordeal. The accused puts some saliva on the billhook, which is held above a fire set up in the courtyard.

The bystanders use a winnowing basket to fan the flames. As in the case cited above, the man who presides over the test, requests the spirits of the dead to refrain from interfering and to let the test follow its course. If the billhook becomes red, the innocence of the individual is proved.

E. The "iron-piece" test. Two spears are stuck into the ground on the public square. Between them is set an earthenware jug or wooden vessel in which a beverage is prepared /424/ with disparate and repulsive ingredients. Cow dung, the droppings of birds and animals (crowned crane, crow, etc.), honey and beer, the leaves of certain plants (the castor-oil plant, isenyanguzi), etc., chopped up

695 in the liquid, such are the ingredients of this drink which is prepared for God's judgment.

A small piece of iron, kadigi, which is believed to have a magic property, is tossed into the vessel. Gravity and solemnity are the rule during sessions of this kind. A drinking tube is given to the accused to take the poison. Some people are made seriously ill by it, while others are able to "relieve" themselves almost immediately, which goes to prove their innocence.

F. The chick test. The accused are given small chicks which have just hatched. Each of them must hold one in his hand under the supervision of watchmen who are supposed to prevent tricks and infractions in the proceedings. The chick which survives the lack of food for the longest period of time (about one day and one night) proves "in its own way" the honesty of its lucky owner.

G. The boiling water test, so well known and so popular in the Middle Ages. The procedure is the same.

The numbers and kinds of ordeals vary among the provinces of Ruanda. Many of them were borrowed from neighboring lands with which the Banyarwanda have frequent contact.

[177] Up to now, both plaintiffs and defendants had frequent recourse to those methods. The introduction of European tribunals has dealt a death blow to tests of this sort, which occur in the beginnings of every civilization. /425/

Chapter 3

Rain Makers or Tempest Makers (Ababvubyi). Protectors Against Lightning (Abagangahuzi). Ravagers of Crops and Fields (Abahoryo).

791 Owing to the people's credulity, the services of these personages are among the most valued and also the most lucrative. They seldom live at the capital, or go there only occasionally when summoned expressly.

644 king's saliva in their procedures carry out their duties in the greatest secrecy. The same applies to the official historians (abachurabgenge), /471/ the keepers of the traditions (abiru) and the members of the royal corporation of undertakers. No layman is permitted to have close contact with them. In order to insure their zeal, their attachment, and their trustworthiness, the sovereign submits them at the outset to a sort of test poison (igihango), which in the minds of the Blacks has a noxious, suspensive, and subsequent effect. To this end, the aspirants or successors to the above-mentioned positions were formerly led to Gihanga in the Nduga, on the banks of a famous spring, to drink the beverage that would guarantee their future fidelity. The officials in charge of those tests threw into the water on the preceding day some leaves, plants, and shrub branches which played an important role in this kind of ceremony. The horn of a bull also had to be obtained and dipped in the water, and whenever possible it had to come from a bull who had killed at least one person, as if the memory of the spilled blood were henceforth to haunt the minds of the new candidates and to fill them with terror. The performance was carried out with great seriousness. After drinking this magic water, the participants in the test were expressly forbidden to spit, smoke, or drink beer during the first few days, so that the beverage might work its effect upon them unchecked. The Blacks are indeed very meticulous in the fulfillment of their rites and superstitions (imihango n'imigenzo). It was believed that from that time forward, those who had passed the test could not fall short in their official duties. They had pledged themselves forevermore, and the least infidelity, the least breach of duty could only entail disastrous consequences leading to the loss of their life. As in the case of the initiates into the Ryangombe secret society, the test poison thereafter exercised upon them a suspensive and subsequent effect.

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It was a sort of Damocles' sword, ever ready to fall upon them in case of disobedience or violation of secrecy. /472/

By drinking the magic beverage, they pledged themselves implicitly to serve the king as the nature of their functions required and to maintain secrecy to outsiders about all court events.

Woe to them if they broke professional secrecy!

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695 We have seen that in order to preserve the supernatural properties of the beverage (igihango) the candidates were forbidden to smoke, drink, or spit. What were they to do in order to avoid the disastrous effects that the test poison, according to popular belief, might have upon their health?

Accustomed as primitives are to the strangest and most incredible things, the Banyarwanda believed that in order to avert any danger in this connection, all they had to do was to commit a shameful act immediately.

As a result of this belief and in the thought that they were being helpful to the neophytes, their relatives led them away, outside the clan, along with some friends. They lay in wait and seized [839] a young man or a young girl, depending on the sex of the candidate, and did violence to the young person.

It must be added that the Blacks, knowing the distaste of [178] Europeans for such sport, have not dared to fulfill the last part of the program since the arrival of the Whites.

II. Dangers to Which Dignitaries, Employees, and Favorites at Court Were Exposed at All Times

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661 It may be said that until recent years the secret of certain customs and traditions had been well preserved, for fear of the effects of the test poison and for fear of the king, who would not hesitate to punish delinquents at the first sign of indiscretion. It is equally true that until our time the majority of servants /473/ and underlings lived under the risk and perpetual threat of a violent death which might claim them at any moment. The monarch, who did not rely exclusively on the effectiveness of the test poison and probably had very good reasons not to do so, unfortunately made use quite often of his prerogatives as sovereign and his discretionary power over all things to apply extravagant punishments. Nothing counted in his eyes except his own interests, his whims and his passions. He frequently gave free rein to the latter. A mere suspicion or even less was sufficient to cause the merciless death of an unfortunate individual.

681 Punishment by whipping seems to be done less in Ruanda than in Bgisha where the chief ties people to trees and has them punished with up to 100 strokes of the whip on their backs. This [177] custom is said to have been borrowed from the English Askari who were stationed there.

On the subject of property rights we wish to make only a 423 few general remarks. The entire country is the private property 428 of the king and is regarded as either entrusted to the chiefs or granted to the clans. All the farmers and herdsmen are merely tenants or have the use of the land. As a consequence, the chief and clan community have the final word in matters dealing with the inheritance of usufruct of so-called crown property, that is, fields and cattle.

Only household goods, with the exception of cows, are private 422 property in our sense, and here the wish of the person disposing of 428 the property is decisive, although certain time-honored customs cannot be circumvented. In Bugoye, for example, the oldest son gets the spear and the stool of his father, whereas the shield belongs to the youngest son. (2) Lieutenant Spiltoire told me that in

2. Classe, Father, Moeurs et Coutumes des Bagoye [Manners and Customs of the Bugoye] (Les Missions Catholiques, 1905), p. 439.

Bunyabungu, the principal heir seems to be the son of the sister, but because of his brief visit, he could not verify this.

692 Administration of Justice. In Ruanda the administration of ●695 justice is in the hands of the chiefs and the king.

Pronouncing judgment is only of secondary importance, but [280] the chiefs regard it as a sure means of gaining influence. The two parties regard the trial as an attempt to interest a powerful one -- a chief -- in their affairs, that is to say, to make their affairs the affairs of the mighty. The one who wins a case is simply the one who was more highly regarded by the chief and with whom, from now on, it is dangerous to quarrel. In Ruanda it is a long process from the pronouncement of justice to the execution of it.

692 The verdict means that the judge, not the state, has taken a cer-
695 tain stand. The state, even in principle, does not represent abstract justice. In order to carry out the verdict, one must have sufficient power, either in his own right or through his allies; otherwise it would be impossible to take any action that would be unpleasant for others.

692 In the communities the administration of justice is in the hands of the subchiefs. A person who is dissatisfied with their verdict may consult his high chief. I have heard that the common man may appeal to the king, but from other reports this seems to me quite improbable. This right can have no practical significance for the common man, if indeed it exists. He could not incur the displeasure of the nearest small potentates with whom he has primarily to deal. Going directly to the king means not only a demonstration of distrust toward one's nearest superior, but it also represents an attempt to free oneself from the hierarchy of subordination and make oneself directly subordinate to the king.

692 For the clients (bagaragu) of the king, the royal court is the
431 first and also the final authority. There is no other recourse, except to the force of arms, provided one dares to revolt. Hence higher authority always takes action, but it also takes into account general peace and order and is not guided by abstract principles of justice. Moreover, gifts to the judge play an important part and are not regarded as something punishable or even inappropriate. The parties regard these gifts as court fees, even though larger gifts are usually combined with greater hopes for the favorable outcome of the trial. The size of the gifts does not seem to be fixed. In important cases large presents are given. Not infrequently the judge is even presented with a cow.

692 Although trials before the king do not often occur, nevertheless all over Ruanda one hears that someone has gone to Musinga regarding judicial matters. This expression stems from the fact that people go to their high chiefs who are staying at the court of Musinga in Nyanza. The trials take place in Nyanza at the compound (bilaro) of the chief concerned. For example, I met a band of people from Njaruguru who were on their way "to Musinga." On more careful investigation [281] it turned out that

692 "to Musinga" simply meant the place of his residence. The judge to whom these people were going was Rwamanwa, high chief of Njaruguru.

If the two parties have different chiefs, the trial is conducted at the compound of the more powerful one, since otherwise, because of injured vanity, he could make it impossible to carry out the verdict. If the two chiefs cannot reach an agreement, they go to a third party or to the king, who usually appoints a judge. [643] The king personally handles only the most important affairs of his bagaragu, but even that he does unwillingly.

● 695 The Trial. Certain forms are observed at trials. The two parties squat on the ground in front of the judge and greet him by clapping their hands. Otherwise only the king is greeted in this way. Then each in turn tells about the matter under dispute.

After the verdict of the judge, the winner immediately rises, takes some grass, and lays it at the feet of the judge in gratitude and as a token of his subservience. He then sings a song of praise in which (in Mulera, for example) he boasts about the number of enemies he has killed.

People sometimes wait in Nyanza two or three months for a trial, and finally the hearing is postponed until the next year. The chiefs do this also. They are afraid of endangering themselves by a sentence of incalculable scope.

696 Executing a sentence is the weak side of primitive justice. There is no organ of the government that would attend to the execution of the decree. Even the decisions of the king are by no means always carried out.

Sometimes, to ensure the execution of the sentence, the guilty party is held prisoner by the winning party until he has fulfilled his obligations.

The sentence is said to be carried out at the place of residence of the two parties. For this purpose the king sends a special messenger. He must inform the population of the decision, in disputes about land he must mark out the sections, and in cases involving cattle, divide up the herds.

Because of the long duration of these cases, which gives all the court schemers an opportunity to fish in troubled waters, the winning party sometimes leaves the capital before the king's

691 debtor A owns something that is being used by C, a cow, for example, then B can bring C a present and, with C's permission, declare the object belonging to A as kugombeka. In this case A loses all rights to the object he has deposited with C until he has settled his debt, and the object is now regarded as B's property. If A is powerful, the kugombeka of his property is declared void. If he is not influential, this becomes a very profitable business. In view of the duration of the suits, C always has the prospect of being able to appropriate the thing that has been put in his charge or at least of using it without incurring obligation. But under the rules of kugombeka he is responsible to B for the object. If he gives it back to its original owner A, he must replace its value to B or [283] owe it to him, and this starts a second suit between B and C which is separate from that between A and B.

426 686 If the users of A's property refuse to accept kugombeka, the creditor can only resort to kufatira.

Kufatira is the confiscation of part of the property of an individual whom one wishes to force to defray his debt or to meet his responsibilities. Kufatira is also used to force someone to appear at a trial. The use of force is conceded in the case of kufatira, but otherwise infringement of property rights and the use of violence are basically regarded as punishable offenses.

Kufatira can be used successfully only against weaker debtors. If the debtor is very weak, he can even be plundered and bound with a rope until his family takes mercy on him and ransoms him. If, however, the debtor is powerful, kufatira can have all the consequences of a lost war, and there is no recourse but to make one's concern the concern of stronger protectors.

685 In cases of theft, the procedure is considerably simpler, and the judge receives no presents.

695 Evidence. The testimony of witnesses is very important in court trials in Ruanda. The accused has the right to demand witnesses to prove his guilt, but he also has the right to eliminate the testimony of certain witnesses if he has convincing reasons. Such witnesses are, for example, relatives, blood brothers, and clients (bagaragu) of the accuser. The accuser is obliged to comply

695 with this and to secure witnesses who are not dependent on him.

695 431 A witness may refuse to testify. In order to dissuade him from making use of this right, he is given presents by the one who wishes him to testify.

Gifts to witnesses are no secret. They are regarded as something quite natural, a sort of compensation for the unpleasantness that may result from testifying. That is why one often hears of a witness delaying his testimony for a few days in order to give people a chance to bring him presents or saying that he will testify after he has received his nzoga. In this case nzoga does not mean merely beer, but all kinds of presents, such as goats, hoes, or even cows, depending on the importance of the case.

695 687 In spite of the custom of giving presents to witnesses, false testimony is punishable. Thus, it is said that Lwabugiri Kigeri, for example, who was strict but just, simply had false witnesses killed.

695 [284] Court procedure in Ruanda allows the accused and the witness to swear oaths. At trials the following form of oath is used. The person taking the oath sticks his spear into the ground and says: "May this spear kill me if I did this." This way of taking an oath is called kuchulika ichuma. This form of oath is feared. [687] Perjury was punished with death in Lwabugiri's time.

In this connection we must also mention the forms of allegation which are used, for example, when witnesses testify. The one corresponding to the form of oath given above consists of pointing to one's spear and saying, "dakolitera Musinga." This brief statement means "if that is not true, I shall pierce the king with this spear." Connected to this is another form: "bandoga Musinga (I shall poison Musinga if this is not true)." This form is also used if one wishes to assure the king that what one has said is true. Thus, for example, Musinga asked a man whether he had seen Kabare, "wabonye Kabare?" The man answered in the affirmative, "yee." The king did not believe it and wanted to make sure, "nukuli." The man thereupon answered, "bandoga Musinga," and the matter was settled. If one doubts the truth of a person's statement, he may also say, "lahira (swear)." The person then answers, "bandoga Musinga."

● 685 The last two allegations imply that sad consequences could result if a person expresses intentions that are hostile to the king. The person making the statement publicly announces that if he told a lie he would willingly suffer persecution for threatening the sacred person of the king. Nevertheless, the Batutsi, who could probably set a record for lying, use this phrase constantly.

In doubtful cases where the testimony of witnesses is not at hand or is not sufficiently credible, as well as in cases where the use of sorcery is suspected, the poison test (kihango) is resorted to. The poison test is conducted by the babandwa [members of secret societies who conduct ceremonies].

In Kissaka the poison is dissolved in water and handed to both parties in two cow horns. This gives the mubandwa an opportunity to influence the outcome directly and to use his own judgment in determining the guilty one. Although this makes it very easy for a person to misuse the poison test, the people of Kissaka believe in it. [797] Even the Christians do, in spite of the otherwise very great influence of the mission. The poison test seldom results in death in Ruanda, for the person taking it can immediately spit and vomit. The poison is not always drunk, for not infrequently the mubandwa is satisfied to dip his thumb into the poison and stick it into the mouth of the person, who may immediately expectorate. In such cases the effect is purely a psychological one. [285] Father L. Classe, who lived in the country seven years, never heard of a death caused by the poison test.

Another very important form of evidence is testimony from the entrails of chickens killed for this purpose. We shall discuss this somewhat more fully below in connection with religious practices.

Quite independent of the chicken oracle, there is a chick oracle that is conducted in the following way. The accused takes a very small chick and carries it in his hand a whole day. If the chick dies, the man is guilty, yiera bura (he is black). [822] If the chick does not die, the man is innocent, yeira [sic] bwera (he is white). A very strange color association for the Negro world (see page 145).

All forms of evidence and allegation, such as the poison test, the chicken oracle, the spear oath, and the Musinga oath, are

695 referred to simply as kushoko, "drinking." This fact indicates that the poison test was the oldest form. To give a person this test is called kushora which simply means "to give a drink." Thus they say: "Umututsi ashora inka ze (the Mututsi gives his cows a drink)," as well as "kushora ikihango (to drink poison)" and "kushora- (literally, to drink a chicken)."

[286] Chapter 14

History and Chronology

173 Ruanda. I had great difficulty in obtaining data about the history of Ruanda. Oral tradition in the interlacustrine region is limited chiefly to the genealogy of the rulers. This basic skeleton is also generally supplemented by a few statements about the chief events of the corresponding epochs. My informants, however, knew little about the history of the dynasty, since most of them were Bahutu.

124 Musinga gave Captain W. Von Grawert, who introduced me to him, his royal promise that he would have reports made to me on the history of the country or even tell me about it himself. [187] The chicken oracle, however, said that the king would suffer harm if I were initiated in the history of the country. The next time I visited Musinga and tried to have certain contradictions in my notes on the Ruanda rulers cleared up by this authoritative source, I was kept dangling for two and a half hours and was unsuccessful. His Black Majesty was very pleasant, but during the whole time he kept practicing, in German, the meaningless sentence, "Little spear is pretty."

Musinga wanted to please me by demonstrating his zeal in learning the German language and in this way divert my attention from interviewing him.

173 [715] [521] It seems that in Ruanda as well as In Nkole one may not speak about deceased kings with the uninitiated, for the spirits, disturbed in their rest, might avenge themselves. However, people talk about olden times in the evening when the nobility gather with the king, pay court to him, and drink beer. They know

7: Roscoe M-5 (1919-1920) 1924
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might put the other to death without fear of punishment, for the witnesses would state the reason for his action and he would not suffer for it.

When a murder was committed secretly and the body was found without any trace of the murderer, it caused much difficulty. The relatives had to inform the chief of anything they knew concerning the relations of the dead man with the people of the district. Any person with whom the dead man had had a quarrel or disagreement was captured, and a priest killed a fowl and took an augury in order to find out whether he was guilty or not. Should the augury be in the suspected man's favour he was released, and some other magical means of finding the murderer were tried.

Sometimes a murderer would confess his deed to the king or chiefs and notify his desire to atone. The family of the murdered man were called to a meeting and the murderer had to supply a sheep. The king was present at the meeting and ordered the animal to be killed and cut open, after which the murderer and the head-man of the murdered man's clan placed their hands on the entrails. Portions of every kind of food used by the people were brought and placed in the sheep with purificatory herbs, and again the two men placed their hands in it. The sheep was then called *Maana* or god and was the pledge of peace. Some clans, however, refused to make peace with a murderer and awaited an opportunity of killing either the criminal or some member of his clan.

When a man killed another accidentally and succeeded in proving that there was no malice or intention about the act, he paid fourteen cows to the family of the dead man, with whom he remained on friendly terms. If a man wounded another he paid him eight cows as compensation.

When a warrior killed a man in battle, the king and chiefs honoured him and gave him presents of land and cattle. Sometimes when the king was specially pleased, he would give a warrior a princess to wife. The warrior had to be purified on his return from the battle, but observed no other taboo.

7: Roscoe M-5 (1919-1920) 1924
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be consummated until he had gone. The rest of the bride's party left on the second day, after receiving presents. 585

A son-in-law did not fear his wife's parents, but was regarded and treated by them as a son. [606]

A man might marry as many as five wives, but he brought only one of them to live in his own village; for the others he built houses in their villages and visited them there. If he was wealthy, which was usually the condition of a man who married more than one wife, he gave each of them cows to supply her with milk, a man to herd them, men to dig her field, and also maids to wait upon her and work in her field. 595 [556]

A wife was usually restricted to her husband in sexual intercourse, but when a great friend of the husband paid him a visit he might permit him to live with one of his wives who acted as the visitor's wife for the time. It was, however, more usual for a guest to go to another house with his own wife, or for the host and his wife to sleep on a mat on the floor and leave the bed to the guest and his wife. 837

Illness and Death

When a man fell ill, his wife informed his relatives and a medicine-man was summoned to discover by augury whether magic was being used or whether the illness was the work of some ghost. If magic was found to be the cause of the illness, the name of the person using it had also to be discovered by augury, and he was accused and brought before the king or some chief to be tried. Invariably a man who had been discovered by augury to be guilty was condemned without question; he might appeal to the poison ordeal, but he had very little chance of escape, and was always put to death. If the augury showed the illness to be due to a ghost, a bull was offered to the ghost and it was begged to stop troubling the man. 754 [787] 695 683 [775] [782]

Before a man died he generally named his heir, who was usually one of his sons, though not necessarily so and not always the eldest son. If a man died without having named 428 [763]